99TH CONGRESS
2d Session

SENATE

TREATY DOC.
99-19

INVESTMENT TREATY WITH TURKEY

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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF TURKEY CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS, WITH PROTOCOL, SIGNED AT WASHINGTON, DECEMBER 3, 1985

MARCH 25, 1986.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

71-118 O WASHINGTON : 1986

Y1.1/4:

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *March 25, 1986.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and the Republic of Turkey concerning the Reciprocal Encouragement and Protection of Investments, with Protocol, signed December 3, 1985, at Washington. I transmit also, for the information of the Senate, the report of the Department of State with respect to this treaty.

This treaty is among the first six treaties to be transmitted to the Senate under the Bilateral Investment Treaty (BIT) program which I initiated in 1981. The BIT program is designed to encourage and protect U.S. investment in developing countries. The treaty is an integral part of U.S. efforts to encourage Turkey and other governments to adopt macroeconomic and structural policies that will promote economic growth. It is also fully consistent with U.S. policy toward international investment. That policy holds that an open international investment system in which participants respond to market forces provides the best and most efficient mechanism to promote global economic development. A specific tenet, reflected in this treaty, is that U.S. direct investment abroad and foreign investment in the United States should receive fair, equitable, and nondiscriminatory treatment. Under this treaty, the parties also agree to international law standards for expropriation and compensation; free financial transfers; and procedures, including international arbitration, for the settlement of investment disputes.

I recommend that the Senate consider this treaty as soon as possible, and give its advice and consent to ratification of the treaty, with protocol, at an early date.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, February 19, 1986.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the United States and the Republic of Turkey Concerning the Reciprocal Encouragement and Protection of Investments, with Protocol, signed at Washington, December 3, 1985. This treaty is among the first six treaties to be negotiated under the bilateral investment treaty (BIT) program which you initiated in 1981. Development of the BIT program and the negotiation of the individual treaties have been pursued by the Office of the United States Trade Representative and the Department of State with the active participation of the Department of Commerce and the U.S. Treasury, in conjunction with other interested U.S. Government agencies. I recommend that this treaty, as well as the others concluded with the Kingdom of Morocco, the Republic of Haiti, the Republic of Panama, the Republic of Senegal, and the Republic of Zaire, be transmitted to the Senate for its advice and consent to ratification.

In 1981 you initiated the global bilateral investment treaty (BIT) program to encourage and protect U.S. investment in developing countries. By providing certain mutual guarantees and protections, a BIT creates a more stable and predictable legal framework for foreign investors in each of the treaty Parties. The negotiation of a series of bilateral treaties with interested countries establishes greater international discipline in the investment area.

The six treaties which have been signed as well as others under negotiation are an integral part of U.S. efforts to encourage other governments to adopt macroeconomic and structural policies that will promote economic growth. They are also fully consistent with your policy statement on international investment of September 9, 1983, which states that international direct investment flows should be determined by private market forces and should receive fair, equitable and non-discriminatory treatment.

Our experience to date has shown that interested countries are willing to provide U.S. investors with significant investment guarantees and assurances as a way of inducing additional foreign investment. It is our policy to advise potential treaty partners that conclusion of a BIT with the United States is an important and favorable factor in the investment relationship, but does not in and of itself result in immediate increases in U.S. investment flows.

Congressional support for the BIT program is reflected in Section 601 (a) and (b) of the Foreign Assistance Act, as amended, in particular at Section 601(b) which provides:

> In order to encourage and facilitate participation by private enterprise to the maximum extent practicable in achieving any of the purposes of this Act, the President shall . . . (3) accelerate a program of negotiating treaties for commerce and trade, including tax treaties, which shall include provisions to encourage and facilitate the flow of private investment to, and its equitable investment in, friendly countries and areas participating in programs under this Act.

BITs are consistent in purpose with the network of treaties of Friendship, Commerce and Navigation (FCNs) which the United States negotiated from the early years of the Republic until the last successful negotiations with Thailand and Togo in the late 1960s. They continue the U.S. policy of securing by agreement standards of equitable treatment and protection of U.S. citizens carrying on business abroad, and institutionalizing processes for the settlement of disputes between investors and host countries, and between governments. We expect that a series of bilateral treaties with interested countries will establish greater international discipline in the investment area.

The BIT was designed to protect investment not only by treaty but also by reinforcing traditional international legal principles and practice regarding foreign direct private investment. In pursuit of this objective, the model BIT adopts FCN language and concepts. Traditional FCN provisions granting rights which are not important to the typical U.S. investor were eliminated and replaced with more specific language concerning investment protection. Perhaps most significantly, the BIT goes beyond the traditional FCN to provide investor-host country arbitration in instances where an investment dispute arises.

Our BIT approach followed similar programs that had been undertaken with considerable success by a number of European countries, including the Federal Republic of Germany and the United Kingdom, since the early 1960s. Indeed, our industrialized partners already have nearly two hundred BITs in force, primarily with developing countries. Our treaties, which draw upon language used in the U.S. FCN treaties as well as European counterparts, are more comprehensive and far-reaching than European BITs.

The United States-Turkish Treaty

The treaty with Turkey was negotiated by an inter-agency team led by officials from the Office of the United States Trade Representative and the Department of State. The treaty satisfies all four main BIT objectives:

—Foreign investors are to be accorded treatment in accordance with international law and are to be treated no less favorably than investors of the host country and no less favorably than investors of third countries, whichever is the most favorable

treatment, ("national" and "most-favored-nation" treatment) subject to certain specified exceptions.

—International law standards shall apply to the expropriation of investments and to the payment of compensation for expropriation;

—Free transfers shall be afforded to funds associated with an investment into and out of the host country; and

—Procedures are to be established which allow an investor to take a dispute with a Party directly to binding third-party arbitration.

The provisions on treatment of foreign investment and arbitration, and in particular Turkey's acceptance of international law as the governing law, mark an important achievement for the BIT program and our investment and international arbitration policies.

A technical memorandum explaining in detail the provisions of this treaty will be transmitted separately to the Senate Committee on Foreign Relations. That technical memorandum explains, clause by clause, the provisions of the treaty with Turkey.

Some provisions of the treaty with Turkey differ in minor respects from the U.S. model text. In general, however, the treaty closely follows the language contained in the U.S. model text, the most significant provisions of which are as follows.

The model BIT's definition section clarifies terms such as "company of a Party" and "investment." The BIT concept of "investment" is broad and designed to be flexible; although numerous types of economic interests are enumerated, the intent is to include all legitimate interests in the territory of either Party, whether directly or indirectly controlled by nationals of the other, having economic value or "associated" with an investment. Protected "companies of a Party" are those incorporated or otherwise organized under the laws of a Party in which nationals of that Party have a substantial interest.

The model BIT accords the better of national or most-favored-nation (MFN) treatment to foreign investment, subject to each Party's exceptions which are listed in a separate Annex. The exceptions are designed to protect state regulatory interests and for the United States to accommodate the derogations from national treatment in state or federal law relating to such areas as air transport, shipping, banking, telecommunications, energy and power production, insurance, and from national and MFN treatment in the case of ownership of real property. Any future exceptions to these standards which a Party adopts are not to affect existing investments. The BIT also includes general treatment protections designed to be a guide to interpretation and application of the treaty. Thus, the Parties agree to accord investments "fair and equitable treatment" and "full protection and security" in no case "less than that required by international law." It specifically grants nationals of a Party the right to establish investments in the territory of the other Party, restricts the right to impose performance requirements, and obliges Parties to observe their contractual obligations with investors. The U.S. model also provides that nationals and companies of either Party shall in the territory of the other Party be permitted to employ professional, technical and managerial personnel of their choice regardless of nationality.

The model BIT also confers protection from unlawful interference of property interests and assures compensation in accordance with international law standards. It provides that any direct or indirect taking must be: for a public purpose; nondiscriminatory; accompanied by the payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general standards of treatment discussed above. The BIT's definition of "expropriation" is broad and flexible; essentially "any measure" regardless of form, which has the *effect* of depriving an investor of his management, control or economic value in a project can constitute expropriation requiring compensation equal to the "fair market value." Such compensation, which "shall not reflect any reduction in such fair market value due to . . . the expropriatory action," must be "without delay," "effectively realizable," "freely transferable" and "bear current interest from the date of the expropriation at a rate equal to current international rates." The BIT grants the right to "prompt review" by the relevant judicial or administrative authorities in order to determine whether the compensation offered is consistent with these principles. It also extends national and MFN treatment to investors in cases of loss due to war or other civil disturbance. The BIT does not provide, however, a specific valuation method for compensating such losses.

The model BIT provides for free transfers "related to an investment," specifically of returns, compensation for expropriation, contract payments, proceeds from sales, and contributions to capital for maintenance or development of an investment. Such transfers are to be made in a "freely convertible currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred." The model text recognizes that notwithstanding this guarantee Parties can maintain certain laws and regulations regarding transfers provided these are applied in a non-discriminatory fashion. In particular, the model text provides that Parties can require reports of currency transfers and impose income taxes by such means as a withholding tax on dividends.

The model BIT provides that where certain defined investment disputes arise between a Party and a national or company of the other Party, including disputes as to the interpretation of an investment agreement, and the dispute cannot be solved through negotiation, it may be submitted to arbitration in accordance with any dispute-settlement procedures to which the national or company and the host country have previously agreed. Unless the national or company has submitted the dispute to previously agreed dispute settlement procedures or to adjudication by domestic courts or other tribunals of the host country, the national or company may submit the dispute to the International Centre for the Settlement of Investment Disputes ("ICSID"). Exhaustion of local remedies is not required. In a separate provision, the BIT Parties also agree to grant nationals and companies of the other Party access to their domestic courts in order to assert claims and enforce rights with respect to investments.

The model BIT provides for state-to-states arbitration between the Parties in case of a dispute regarding the interpretation or application of the treaty. In the absence of an agreement that other

rules apply, the BIT refers the Parties to specific procedural rules which must govern the arbitration. The BIT also outlines the procedures for the creation of the arbitral panel.

The model BIT exhorts Parties to apply their tax policies fairly and equitably. Because the United States specifically addresses tax matters in tax treaties, the BIT generally excludes such matters. It also specifically limits the arbitration provisions to only certain taxation matters. Another BIT provision exempts disputes arising under Export-Import Bank programs, or other credit guarantee or insurance arrangements providing for alternative dispute settlement arrangements, from the standard BIT arbitration clauses. The model BIT also states that the treaty shall not derogate from any obligations that require more favorable treatment of investments and declares that the treaty shall not preclude measures necessary for public order or essential security interests. The model BIT enters into force 30 days after exchange of ratifications and continues in force for at least ten years. Thereafter, either Party may terminate the treaty, subject to one year's written notice.

Each of these model provisions was developed after lengthy and extensive consultations within the U.S. Government and with the private sector. Nonetheless, in negotiating a particular treaty, the U.S. Government retains, of course, some flexibility to adopt modifications as necessary and in light of experience. While the U.S. model text has recently been simplified, the provisions summarized above have all been retained.

Some of the provisions of the U.S.-Turkish treaty differ in minor respects from the U.S. negotiating text, although none of the changes represent substantive departures from U.S. objectives. The more significant of modifications are as follows:

(1) *General treatment language.*—The model BIT calls for national and MFN treatment on establishment. Article II, paragraph 1 of the Turkey BIT requires MFN treatment on entry for the other Party's investors as a minimum standard. National treatment related to new investment is required "within the framework of [national] laws and regulations." The Turkish negotiators insisted on qualifying national treatment on entry because of ownership provisions in the Turkish investment law. The effect of this qualification is to provide for MFN treatment for establishing new investments, but the better of national or MFN treatment for all investments once established. This formulation was also used in the BIT with Morocco.

Like the other BITs being submitted together with this treaty, this treaty specifically requires the more favorable of national or MFN treatment for established investments of the other party (Article II, paragraph 2). This conforms to the U.S. Model text. As with the other BITs, the treaty with Turkey permits limited exceptions to the national treatment standard on an MFN basis for specified economic sectors and activities. These exceptions are set out in paragraph 1 of the Protocol and include those for which U.S. law will not permit the extension of national treatment to foreign investors in the United States. Although analogous to the Annex in the model text, the Turkish Protocol has no provision for subsequent modifications to the exceptions list. (This is similar to the approach provided in the BIT with Morocco.) Under the U.S. Model

text, each Party may unilaterally add future exceptions under sectors and matters identified in the annex but each agrees to keep such exceptions to a minimum and to notify the other Party of these exceptions. In contrast to this approach, any changes in the exceptions list in the Turkish BIT would have to be made through amendment to the treaty under Article XII, paragraph 3.

(2) *Performance requirements.*—The U.S. model text prohibits the imposition of performance requirements as a condition for establishment. The Turkish BIT has a hortatory standard, stating that each Party "shall seek to avoid performance requirements as a condition of establishment." (Article II, paragraph 7.) Our BITs with Haiti, Morocco, and Senegal have similar hortatory language. These countries either have or wish to retain the right to use some limited local content/export incentives or requirements as part of their national economic development policies.

(3) *Expropriation.*—Although this treaty is substantively identical to the U.S. model text on this issue, the Turkish negotiators could not accept model treaty language providing for the payment of interest "at a commercially reasonable rate" in the event of delayed compensation after an expropriation. The Turkish constitution requires that such interest be paid at the "government borrowing rate." To ensure that the value of compensation is not reduced over time by interest payments which do not preserve real value, Article III, paragraph 2 provides that "in the event that payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position no less favorable than the position in which he would have been, had the compensation been paid immediately on the date of expropriation."

(4) *Transfers.*—The U.S. model text language permitting transfers to be made "freely and without delay" has been retained but was qualified in the Protocol due to Turkish concerns about foreign exchange shortages. Paragraph 2(a) of the Protocol states that "without delay" means that transfers shall be completed as rapidly as possible in accordance with normal transaction procedures and will never take longer than two months. Paragraph 2(b) states that "in exceptional financial or economic circumstances relating to foreign exchange," Turkey may temporarily delay the transfer of proceeds from the sale or liquidation of an investment until foreign exchange reserves have been raised "to a minimally acceptable level," but that the delay must not exceed three years. The companies attempting to transfer such funds must also have the opportunity to invest these funds in a way which will preserve their value until the transfer occurs.

Submission of this treaty, together with the other five noted above, marks a significant development in our international investment policy. I join with the United States Trade Representative and other U.S. Government agencies in supporting these treaties and favor their approval by the Senate at an early date.

Respectfully submitted,

GEORGE P. SHULTZ.

Treaty Between the United States of America and the Republic of Turkey Concerning the Reciprocal Encouragement and Protection of Investments

The United States of America and the Republic of Turkey (each a "Party")

Desiring to promote greater economic cooperation between them, particularly with respect to investment by nationals and companies of one Party in the territory of the other Party,

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of capital and technology and the economic development of the Parties.

Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources, and

Having resolved to conclude a Treaty concerning the encouragement and reciprocal protection of investments,

Have agreed as follows:

ARTICLE I

1. For the purpose of this Treaty:

(a) "company" means any kind of juridical entity, including any corporation, company, business association or other organization, that is duly incorporated, constituted, or otherwise duly organized, regardless of whether or not the entity is organized for pecuniary gain, privately or governmentally owned, or organized with limited or unlimited liability.

(b) "company of a Party" means a company duly incorporated, constituted, or otherwise duly organized under the applicable laws and regulations of a Party or a political subdivision thereof in which

(i) natural persons who are nationals of such Party, or

(ii) such Party or political subdivision thereof or their agencies or instrumentalities

have a substantial interest as determined by such Party. The juridicial status of a company of a Party shall be recognized by the other Party and its political subdivisions.

(c) "investment" means every kind of investment in the territory of one Party owned or controlled, directly or indirectly, by nationals or companies of the other Party, including assets, equity, debt, claims, and service and investment contracts; and includes:

(i) tangible and intangible property, including rights, such as mortgages, liens and pledges;

(ii) a company or shares of stock or other interests in a company or interests in the assets thereof;

(iii) a claim to money or a claim to performance having economic value and associated with an investment;

(iv) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademark, trade names, industrial designs, trade secrets and know-how, and goodwill;

(v) any right conferred by law or contract, and any licenses and permits pursuant to law; and

(vi) reinvestment of returns, and of principal and interest payments arising under loan agreements.

(d) "own or control" means ownership or control that is direct or indirect, including ownership or control exercised through subsidiaries or affiliates, wherever located.

(e) "national" of a Party means a natural person who is a national of a Party under its applicable law.

(f) "return" means an amount derived from or associated with an investment, including profit; dividend; capital gain; royalty payment; management, technical assistance or other fees; and payment in kind.

(g) "associated activities" include the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds, including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares, and the purchase of foreign exchange for imports.

2. Each Party reserves the right to deny to any of its own companies or to a company of the other Party the advantage of this Treaty if nationals of any third country control such company, provided that, whenever one Party concludes that the benefits of this Treaty should not be extended to a company of the other Party for this reason, it shall promptly consult with the other Party to seek a mutually satisfactory resolution of the matter. This right shall not apply with respect to recognition of juridical status and access to courts.

3. Any alteration in the form in which assets are invested or reinvested shall not affect their character as investment.

ARTICLE II

1. Each Party shall permit in its territory investments, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investments of nationals or companies of any third country and, within the framework of its laws and regulations, no less favorable than that accorded in like situations to investments of its own nationals and companies.

2. Each Party shall accord to these investments, once established, and associated activities, treatment no less favorable than that accorded in like situations to investments of its own nationals and companies or to investments of nationals and companies of any third country, whichever is the most favorable.

3. Investments shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security, in a manner consistent with international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management,

operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. Each Party shall observe any obligation it may have entered into with regard to investments.

4. Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

5. Companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments of nationals or companies of other Party, shall be permitted to engage top managerial personnel of their choice, regardless of nationality.

6. The Parties recognize that, consistent with paragraphs 1 and 2 of this Article, conditions of competitive equality should be maintained where investments owned or controlled by a Party or its agencies or instrumentalities are in competition, within the territory of such Party, with privately owned or controlled investments of nationals or companies of the other Party.

7. Each Party shall seek to avoid performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

8. Each Party shall provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations and properties.

9. Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments.

10. The treatment accorded by the United States of America to investments and associated activities under the provisions of this Article, shall in any State, Territory or possession of the United States of America, be the treatment accorded therein to companies legally constituted under the laws and regulations of other States, Territories or possessions of the United States of America.

ARTICLE III

1. Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropiration") except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II(2).

2. Compensation shall be equivalent to the fair market value of the expropriated investment at the time the expropriatory action was taken or became known. Compensation shall be paid without delay; be fully realizable; and be freely transferable. In the event that payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position no less favorable than the position in which he would have been, had

the compensation been paid immediately on the date of expropriation.

3. A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether such expropriation and any compensation therefor conforms to the principles of this Article.

4. Nationals or companies of either Party whose investments suffer losses in the territory of the other Party owing to war, insurrection, civil disturbance or other similar events shall be accorded treatment by such other Party not less favorable than that accorded to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, as regards any measures it adopts in relation to such losses.

ARTICLE IV

1. Each Party shall permit all transfers related to an investment to be made freely and without delay into and out of its territory. Such transfers include: (a) returns; (b) compensation pursuant to Article III; (c) payments arising out of an investment dispute; (d) principal and interest payments arising under loan agreements; and (e) proceeds from the sale or liquidation of all or any part of an investment.

2. Transfers shall be made in a freely convertible currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency or currencies to be transferred.

3. Notwithstanding the provisions of paragraphs 1 and 2, either Party may maintain laws and regulations (a) prescribing procedures to be followed concerning transfers permitted by this Article, provided that such procedures are completed without delay by the party concerned and do not impair the substance of the rights set forth in paragraphs 1 and 2 of this Article; (b) requiring reports of currency transfer; and (c) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors of the investment or ensure the satisfaction of judgements in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law.

ARTICLE V

1. The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty.

2. If one Party requests in writing that the other Party supply information in its possession concerning investments in its territory by nationals or companies of the Party making the request, then the other Party shall, consistent with its applicable laws and regulations and with due regard for business confidentiality, endeavor to establish appropriate procedures and arrangements for the provision of any such information.

ARTICLE VI

1. For purposes of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement between a Party and a national or company of the other Party; (b) the interpretation or application of any investment authorization granted by a Party's foreign investment authority to such national or company; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.

2. In the event of an investment dispute between a Party and a national or company of the other Party, the parties to the dispute shall initially seek to resolve the dispute by consultations and negotiations in good faith. If such consultations or negotiations are unsuccessful, the dispute may be settled through the use of nonbinding, third party procedures upon which such national or company and the Party mutually agree. If the dispute cannot be resolved through the foregoing procedures, the dispute shall be submitted for settlement in accordance with any previously agreed, applicable dispute settlement procedures.

3. (a) The national or company concerned may choose to consent in writing to the submission of the dispute to the International Centre for Settlement of Investment Disputes ("Centre") for settlement by arbitration, at any time after one year from the date upon which the dispute arose, provided:

(i) the dispute has not, for any reason, been submitted by the national or company for resolution in accordance with any applicable dispute settlement procedures previously agreed to by the parties to the dispute; and

(ii) the national or company concerned has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the Party that is a party to the dispute.

(b) Each Party hereby consents to the submission of an investment dispute to the Centre for settlement of arbitration.

(c) Arbitration of such disputes shall be done in accordance with the provisions of the Convention on the Settlement of Investment Disputes Between States and Nationals of other States and the "Arbitration Rules" of the Centre.

4. Any dispute settlement procedures regarding expropriation and specified in the investment agreement shall remain binding and shall be enforcable in accordance with the terms of the investment agreement, relevant provisions of domestic laws, and applicable international agreements regarding enforcement of arbitral awards.

5. In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counter-claim, right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

6. For the purposes of this Article, any company legally constituted under the applicable laws and regulations of either Party or a political subdivision thereof but that, immediately before the oc-

currence of the event or events giving rise to the dispute, was an investment of nationals or companies of the other Party, shall be treated as a national or company of such other Party.

ARTICLE VII

1. The Parties shall seek in good faith and a spirit of cooperation a rapid and equitable solution to any dispute between them concerning the interpretation or application of this treaty. In this regard, the Parties agree to engage in direct and meaningful negotiations to arrive at such solutions. If such negotiations are unsuccessful, the dispute may be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State. In the event either Party fails to appoint an arbitrator within the specified time, the other Party may request the President of the International Court of Justice to make the appointment.

3. The Tribunal shall have three months from the date of the selection of the Chairman in which to agree upon rules of procedure consistent with the other provisions of this Treaty. In the absence of such agreement, the Tribunal shall request the President of the International Court of Justice to designate rules of procedure, taking into account generally recognized rules of international arbitral procedure.

4. Upon a determination that the Party requesting arbitration has attempted to resolve the dispute through direct and meaningful negotiation, the Tribunal shall proceed to arbitrate the merits of the dispute.

5. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within eight months of the date of selection of the third arbitrator, and the Tribunal shall render its decision within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

6. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceeding shall be paid for equally by the Parties. The Tribunal may, however, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties.

7. This Article shall not be applicable to a dispute which has been submitted to and is still before the Centre pursuant to Article VI.

ARTICLE VIII

The provisions of Article VI and VII shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States or (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE IX

This Treaty shall not derogate from:

(a) laws and regulations, administrative practices or procedures; or administrative or adjudicatory decisions of either Party;

(b) international legal obligations; or

(c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization,

that entitle investments or associated activities to treatment more favorable than that accorded by this Treaty in like situations.

ARTICLE X

1. This Treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order and morals, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE XI

1. With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investment of nationals and companies of the other Party.

2. The provisions of Articles II and V of this Treaty do not apply to taxation matters.

ARTICLE XII

1. This Treaty shall enter into force thirty days after the date on which the exchange of instruments of ratification has been completed. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.

2. Either Party may, by giving one year's written notice to the other Party, terminate this Treaty at the end of the initial ten year period or at any time thereafter.

3. This Treaty may be amended by written agreement between the Parties. Any amendment shall enter into force when each Party has notified the other that it has completed all internal requirements for entry into force of such amendment.

4. With respect to investments made or acquired prior to the date of termination of this Treaty and to which this Treaty otherwise applies, the provisions of all of the other Articles of this Treaty shall thereafter continue to be effective for a further period of ten years from such date of termination.

5. This Treaty shall apply to political subdivisions of the Parties.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty.

DONE in duplicate at Washington, D.C. on the day of December 3, 1985 in the English and Turkish languages both tests being equally authentic.

For the Government of the United States of America:
CLAYTON YEUTTER.

For the Government of the Republic of Turkey:
SUKRU ELEKDAG.

PROTOCOL

1. (a) With respect to Article II(1) and (2), the United States reserves the right to limit the extent to which nationals or companies of Turkey or their investments may establish, acquire interests in, or carry on investments within U.S. territory in air transportation, ocean and coastal shipping, banking, insurance, energy and power production, use of land and natural resources, ownership of real estate, radio and television broadcasting, telephone and telegraph services, submarine cable services and satellite communications. The United States also reserves the right to limit the extent to which nationals or companies of Turkey or their investments may be eligible for government grants, insurance or loan programs. Other than with respect to the ownership of real estate, the treatment accorded by the United States to investments of nationals or companies of Turkey shall be no less favorable than that accorded in like situations to investments of nationals or companies of any third country. Rights to engage in mining on the U.S. public domain shall be dependent on reciprocal rights being granted to investments of U.S. nationals or companies within the territory of Turkey.

(b) With respect to Article II(1) and (2), Turkey reserves the right to limit the extent to which nationals or companies of the United States or their investments may establish, acquire interests in, or carry on investments within Turkish territory with respect to tobacco; spirits and alcoholic beverages (except for wine and beer); the establishment, operation and broadcasting of radio and television programs; railways; ports and domestic maritime transportation; postal, telephone, telegraph, and telecommunications services; lotteries and football pools; armaments, explosives, and gun powder; public utilities (except the production of electricity); ownership of real estate by natural persons outside of municipal boundaries; insurance; banking; airports and domestic air transportation; and unincorporated retailing and service operations.

(c) Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty of any laws, regulations and policies limiting the extent to which investment of nationals or companies of the other Party may within its territory establish, acquire interests in or carry on investments.

2. (a) Concerning Article IV, paragraph 1, "without delay" means that transfers shall be completed as rapidly as possible in accordance with the normal commercial transaction procedures and in no case shall be delayed beyond two months from the date of application.

(b) In exceptional financial or economic circumstances relating to foreign exchange, the Republic of Turkey may temporarily delay transfers of the type specified in Article IV (1)(e), but only (i) in a manner consistent with Article II; (ii) for the time period necessary to restore its reserves of foreign exchange to a minimally acceptable level, but not to exceed three years from the date when the transfer is requested; and (iii) provided that the national or company has an opportunity to invest the proceeds in a manner which will preserve their value until transfer occurs.

3. The Parties agree that this Protocol forms an integral part of the Treaty.

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